

1 Rule 1.15. Safekeeping ~~P~~property.

2 (a) A lawyer shall hold property of clients or third persons that is in a lawyer's  
3 possession in connection with a representation separate from the lawyer's own  
4 property. Funds shall be kept in a separate account maintained in the state where the  
5 lawyer's office is situated or elsewhere with the consent of the client or third person. The  
6 account may only be maintained in a financial institution ~~which~~ that agrees to report to  
7 the Office of Professional Conduct in the event any instrument in properly payable form  
8 is presented against an attorney trust account containing insufficient funds, irrespective  
9 of whether or not the instrument is honored. Other property shall be identified as such  
10 and appropriately safeguarded. Complete records of such account funds and other  
11 property shall be kept by the lawyer and shall be preserved for a period of five years  
12 after termination of the representation.

13 (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole  
14 purpose of paying bank service charges on that account, but only in an amount  
15 necessary for that purpose.

16 (c) A lawyer shall deposit into a client trust account legal fees and expenses that  
17 have been paid in advance, to be withdrawn by the lawyer only as fees are earned or  
18 expenses incurred.

19 (d) Upon receiving funds or other property in which a client or third person has an  
20 interest, a lawyer shall promptly notify the client or third person. Except as stated in this  
21 Rule or otherwise permitted by law or by agreement with the client, a lawyer shall  
22 promptly deliver to the client or third person any funds or other property that the client or  
23 third person is entitled to receive and, upon request by the client or third person, shall  
24 promptly render a full accounting regarding such property.

25 (e) When in the course of representation a lawyer is in possession of property in  
26 which ~~both two or more persons (one of whom may be~~ the lawyer) ~~and another person~~  
27 claim interests, the property shall be kept separate by the lawyer until ~~there is an~~  
28 ~~accounting and severance of their interests. If a dispute arises concerning their~~  
29 ~~respective interests, the portion in dispute shall be kept separate by the lawyer until the~~  
30 ~~dispute is resolved~~ the dispute is resolved. The lawyer shall promptly distribute all  
31 portions of the property as to which the interests are not in dispute.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons, ~~should including prospective clients, must~~ be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. In addition to normal monthly maintenance fees on each account, the lawyers can anticipate that financial institutions may charge additional fees for reporting overdrafts in accordance with this ~~R~~rule. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. ~~If there is risk that the client may divert the funds without paying the fee, the~~ The lawyer is not required to remit ~~the portion from which the fee is to be paid to the client~~ funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds ~~should~~ must be kept in a trust account, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] ~~Third Paragraph (e) also recognizes that third parties, such as a client's creditors,~~ may have just lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client ~~and accordingly may~~. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer

63 must refuse to surrender the property to the client. ~~However, a~~ until the claims are  
64 resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the  
65 client and the third party, but, when there are substantial grounds for dispute as to the  
66 person entitled to the funds, the lawyer may file an action to have a court resolve the  
67 dispute.

68 [5] The obligations of a lawyer under this Rule are independent of those arising from  
69 activity other than rendering legal services. For example, a lawyer who serves as an  
70 escrow agent is governed by the applicable law relating to fiduciaries even though the  
71 lawyer does not render legal services in the transaction and is not governed by this  
72 Rule.

73 ~~A "client's security fund"~~ [6] A lawyers' fund for client protection provides a means  
74 through the collective efforts of the Bar to reimburse persons who have lost money or  
75 property as a result of dishonest conduct of a lawyer. Where such a fund has been  
76 established, a lawyer must participate where it is mandatory, and, even when it is  
77 voluntary, the lawyer should participate.

78 [6a] This Rule is identical to ABA Model Rule 1.15 except it incorporates two  
79 sentences that were added to the prior version of this Rule in 1997. These two  
80 sentences are the third sentence of paragraph (a) of the Rule and the corresponding  
81 fifth sentence of Comment [1].